

CEQA & Historical Resources

Historical Resources Workshop

Organized by Humboldt Heritage Professionals
Network

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Senate Bill 18

What does “Consulting” mean in the SB 18 process ? How is it different from Native American Consultation under CEQA?

Planning is not about an “END, an OUTCOME”

Planning is a **Process**.

Consulting under SB 18 is a process. It could conclude with no outcome.

SB 18 imposes a

State-mandated local
program

with the intent & purpose to
establish meaningful
ongoing government-to-
government consultation in
the planning process.

SB 18 took effect January 1, 2005

local city & county governments are **required to consult** with California Native American Tribes about **proposed local land use planning decisions:**

the adoption or substantial amendment of **general plans, specific plans,** the dedication of **open space** for the purpose of protecting cultural places.

Appropriate Compliance with SB 18 can lead to three results:

- ❑ 1. the Tribes decline or do not respond to the invitation to consult
 - ❑ 2. consultation between the Tribes and a local government results in a mutually satisfying agreement
 - ❑ 3. or consultation cannot produce a mutually satisfying agreement
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Legislative Intent of SB 18

- ☐ To protect and preserve the cultural places of California Native Americans
 - ☐ To include both private and public lands (not covered under tribal government law)
 - ☐ To establish government-to-government consultations regarding potential ways to preserve cultural places
 - ☐ To determine level of needed confidentiality of specific location of cultural places
 - ☐ To develop proper treatment & management plans for cultural resources
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More on Intent...

Cultural places have a limited measure of protection

Tribes have continuing cultural ties to the land and to their traditional heritage

These places are essential elements in tribal cultural traditions, heritages & identities

And More...

- ❑ Ensure that local & tribal governments have early information in the land use planning process to avoid conflicts of interest
 - ❑ To enable Tribes to manage & act as caretakers of their prehistoric, archeological, cultural, spiritual, and ceremonial places
 - ❑ To encourage local governments to consider preservation of “cultural places” by placing them in open space
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SB 18 is **exceptional**

- Because it requires local governments to involve California Tribes in the **early stages** of land use planning
 - Requires the inclusion of both **federally recognized and non-federally recognized** tribes
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SB 18 process contains two additional new elements

- ❑ The Bill allows Tribes to acquire and hold conservation easements to protect their cultural places (the Tribes identified on NAHC contact list)
 - ❑ Permits for protection of cultural places in the Open Space element of the GP
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Relationship to State & Federal Agency Actions

- ☐ SB 18 does not include consultation with **state or federal** agencies
 - ☐ Does not address **activities on state or federally** owned property
 - ☐ Does not include Special Districts or School Districts
 - ☐ Is **not part** of the CEQA statute or process
 - ☐ Is **not** about inadvertent discoveries/MLD's
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OR

☐ SB 18 is **NOT**:

☐ CEQA

☐ NEPA

☐ Section 106

☐ Or any other federal process such as
FERC/Hydro Relicensing

☐ SB 18 is a **new Process** under
state law

When to Consult: General Plan Adoption or Amendment

- ❑ Prior to the adoption or any amendment to a General Plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes for the purpose of preserving or mitigating impacts to Cultural Places.
- ❑ Once contacted, Tribes have 90 days to request consultation.

(GC 65352.3)

When to Consult: Open Space

On or after March 1, if land designated, or proposed to be designated as open space, contains a cultural place, the city or county in which the cultural place is located shall conduct consultations with the Tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the cultural place and for the purpose of developing treatment with appropriate dignity of the cultural place in any corresponding management plan.

GC65562.5

Definition of Consultation

- For the purposes of Section 65351, 65352.3, and 65562.5, “consultation” means the **meaningful and timely process of seeking, discussing, and considering carefully** the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, **seeking agreement**.
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Consultation Definition continued

- Consultation **between** government agencies and Native American Tribes shall be conducted in a way that is mutually respectful of each **party's sovereignty**. Consultation shall also recognize the tribes' potential needs for **confidentiality** with respect to places that have traditional tribal cultural significance.
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Pre-Consultation issues:

- ❑ Identify local and tribal representatives for process: initial contact should be at the highest level (mayor and tribal chair)
- ❑ Make decision who will have responsibility and authority to speak for your government (local & tribal level)
- ❑ Decide how will multi-tribal issues be handled?

More.....

- ❑ Establish internal protocols for tracking notices: tribes will need internal system for tracking notices from local governments; Tribe should develop own system to determine which notices are significant (map with resources)
 - ❑ Establish protocols for external communication: send letters of introduction to other governments; how do various parties want to be contacted; what time constraints do tribes have within tribal governance (i.e. meeting schedule)
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- ❑ Become acquainted with issues of concern for each party: Tribal – do you have nothing in place ? Get started.
 - ❑ Local Gov. share information about local concerns. Hold meeting in tribal & local government offices.
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Consultation is a Management-Partnership

- ❑ With the tribes viewed as “experts” about the land
 - ❑ Consultation should be considered as an **open-ended process** to allow for all opportunities to arrive at a mutually satisfying agreement
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The goal is protection of sacred sites

- ❑ Acknowledge & respect a Tribe's cultural & spiritual values and rights
 - ❑ Provide the earliest possible notice to Tribes
 - ❑ Provide meaningful consultation with tribes
 - ❑ Protect confidentiality of site records
 - ❑ Tribe determines the significance of the place
 - ❑ Tribal partnership in management & protection
 - ❑ Process for acquisition or conservation of cultural places
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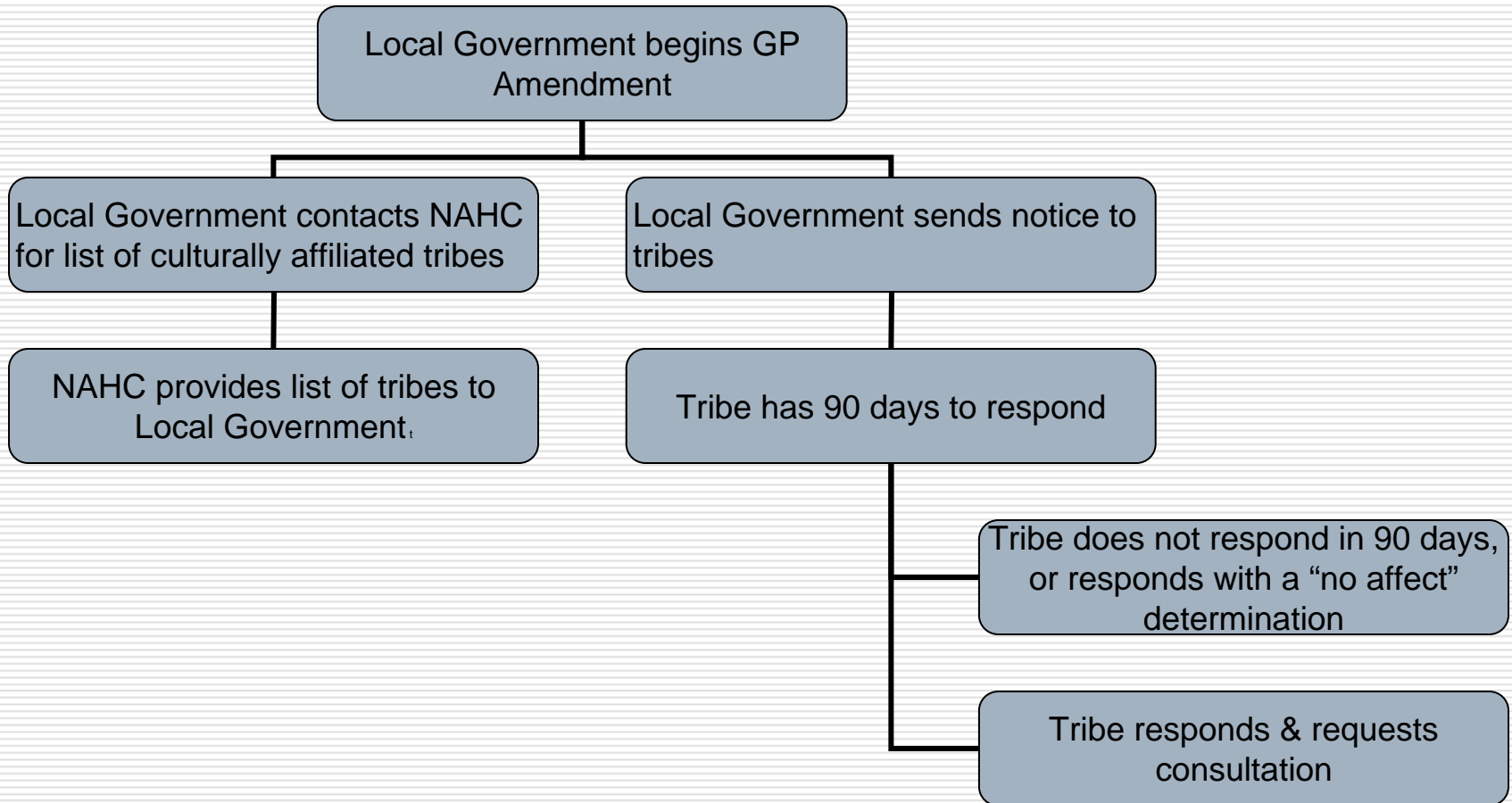
Notification Requirements of SB 18

- ☐ Local Governments must contact & notify Tribes
 - ☐ Notices should be clear and concise
 - ☐ Should contain all pertinent information about a project: maps or technical info. including deadlines & sent by registered mail
 - ☐ Tribes have 90 days to respond; both sides can request/establish shorter protocols
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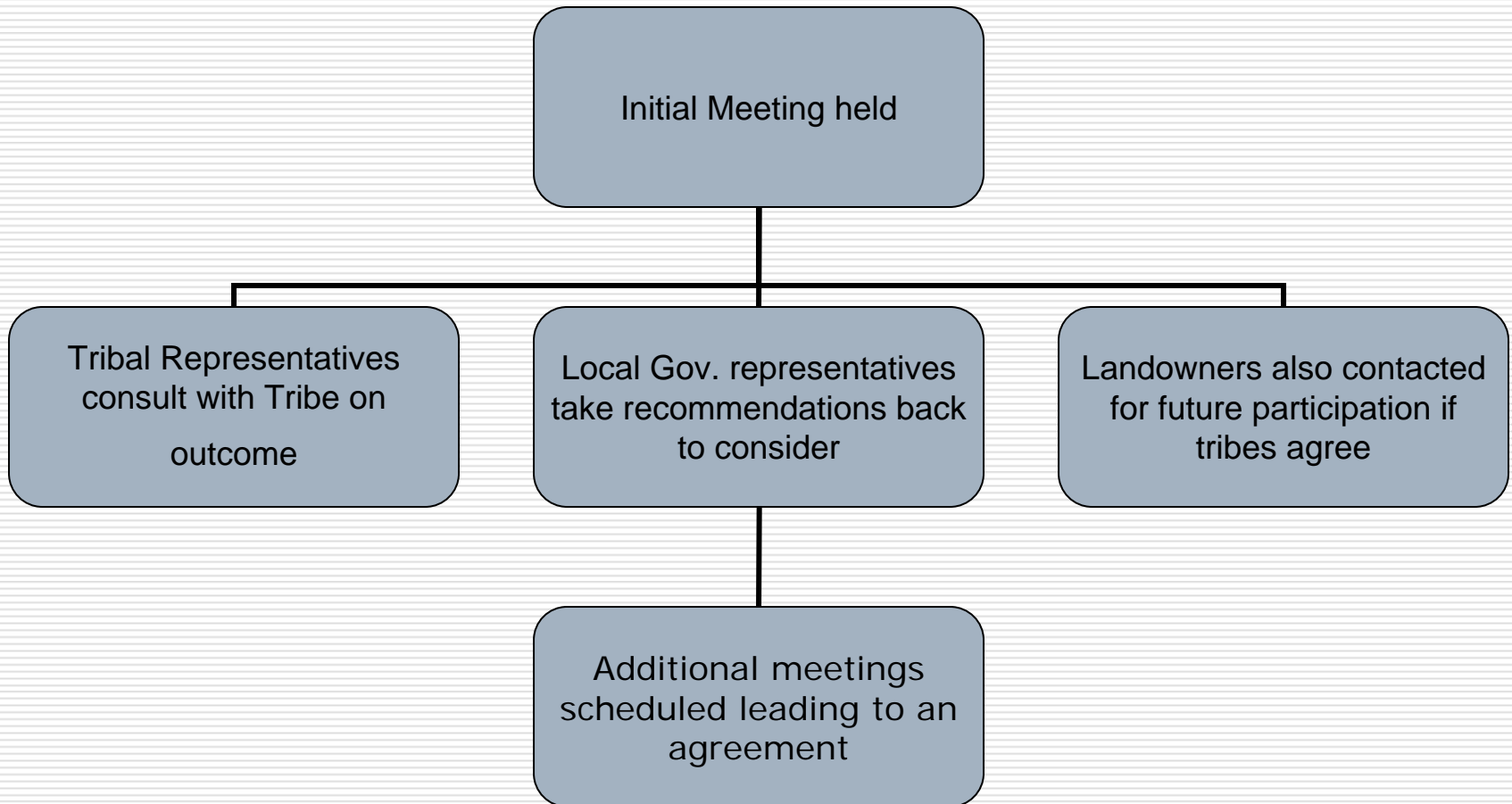
Inappropriate Notification under SB 18:

- ❑ **Standard public notice format**
because it simply notifies the public about a planned proposal (does not contain enough specific information)
 - ❑ **AND** SB 18 is a separate process from the **public meeting & outreach** process pursuant to the planning law
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Process: Initiate Consultation



One possible scenario:



SB 18 consultation should
occur early.....

Before beginning the CEQA process
for a specific project such as a
General or Specific Plan

Under CEQA “Consultation” with a Tribe occurs:

- ❑ **Within** the CEQA process
 - ❑ With a tribal **monitor/representative** through archeologists who are under a contract to a lead agency or a project proponent
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In SB 18 “Consultation”,

- ❑ It is up to the Tribes to define their Native American Cultural Places, some of which might not be a Sacred Site, or some that may not qualify for the California Register.
 - ❑ The Tribes are the **Experts**; they identify why the places are important, which protection measures are sought, whether sites’ might have certain management requirements, whether access or special protections’ are needed.
 - ❑ Government to government is the initial communication which cannot be delegated to a contractor
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What are the Tribe's treatment preferences ? In CEQA.....

- ☐ Under **CEQA** Mitigation includes avoidance, capping and data recovery
 - ☐ Monitoring is part of mitigation (excavation)
 - ☐ **But here** Preservation does not always mean the preservation of the site, especially like a sacred site, because some planned uses i.e. a landfill on a sacred site cannot be mitigated or compensated
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But in SB 18.....

- ❑ Mitigation measures & outcomes can be included in local plans (develop specific language in planning documents) because tribal resources can be identified **up front**, knowledge about Native American human remains can guide where not to plan development, tribal monitoring can occur where disturbances would occur and designation of Cultural Sites as Open Space is possible.
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Local Governments must determine

- ❑ Whether lands proposed for Open Space contain cultural places
 - ❑ What level of confidentiality is needed to protect the specific location, identity of site, its character or use
 - ❑ Also management plans that treat cultural places with dignity might need to be developed
 - ❑ Tribes are experts; **SB 18 Consultation** will provide Local Governments with the required information
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SB 18 Consultation is NOT

- ❑ Consultation on a project like in the CEQA process but rather an **on-going program**
 - ❑ SB 18 spells out the time (90 days) in which the invitation for consultation should occur, but not the time for the **duration** of the consultation
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